DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 50 AGENDA ID 14671 RESOLUTION E-4771 (Rev.2) March 17, 2016

REDACTED RESOLUTION

Resolution E-4771. Pacific Gas & Electric Company requests approval of a Forbearance Agreement with Solar Partners II, LLC related to Ivanpah Unit #1 and a Forbearance Agreement with Solar Partners VIII, LLC related to Ivanpah Unit #3.

PROPOSED OUTCOME:

 Approve Forbearance Agreements between Pacific Gas & Electric Company (PG&E) and Solar Partners II, LLC and between PG&E and Solar Partners VIII, LLC. The Forbearance agreements provide Solar Partners VII, LLC and Solar Partners VIII, LLC with limited time to meet production requirements in exchange for a payment to PG&E. The proposed Forbearance Agreements are approved without modification.

SAFETY CONSIDERATIONS:

• The agreements approved by this resolution will not alter existing agreements or either facilities' operations. This agreement does not require a change in the facilities' operations and, therefore, there are no incremental safety implications associated with approval of these agreements beyond the status quo.

ESTIMATED COST:

• Actual costs of the Forbearance Agreements are confidential at this time.

By Advice Letter 4761-E, filed on December 18, 2015.

159638029

SUMMARY

Pacific Gas & Electric Company's (PG&E) proposed Forbearance Agreements between PG&E and Solar Partners II, LLC and between PG&E and Solar Partners VIII, LLC are approved without modification.

Pacific Gas and Electric Company (PG&E) filed Advice Letter 4761-E (Solar Partners AL) on December 18, 2015, requesting California Public Utilities Commission (Commission) review and approval of two Forbearance Agreements. The Forbearance Agreement between PG&E and Solar Partners II, LLC is related to Ivanpah Unit #1, and the Forbearance Agreement between PG&E and Solar Partners VIII, LLC is related to Ivanpah Unit #3. Both Forbearance Agreements were executed pursuant to the terms in the existing, CPUC approved power purchase agreements (amended Solar Partners PPA). Solar Partners II, LLC and Solar Partners VIII, LLC are jointly referred to as the "Solar Partners" in this resolution.

This resolution approves the Forbearance Agreements. PG&E's execution of the Forbearance Agreements is fair and reasonable and payments received by PG&E pursuant to the Forbearance Agreements shall be credited to PG&E's ratepayers via PG&E's Energy Resource Recovery Account.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X) and SB 350.1 The RPS program is codified in Public Utilities Code Sections 399.11-399.31.2 The RPS program requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources is an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; 33 percent of retail sales by December 31, 2020 and corresponding increases up to 50% by December 31, 2030.

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); and SB 350 (De Leoñ, Chapter 547, Statutes of 2015).

² All further statutory references are to the Public Utilities Code unless otherwise specified.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

Notice of the Solar Partners AL was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Solar Partners AL was mailed and distributed to the R.15-02-020 service list and GO 96-B service lists in accordance with Section 4 of General Order 96-B.

PROTEST

The Solar Partners AL was timely protested by the Office of Ratepayer Advocates (ORA), Helping Hands Tools (HHT), and Marin Clean Energy (MCE) on January 15, 2016.³ NRG Energy⁴ also filed a timely response on January 15, 2016. While NRG supports the Forbearance Agreements, both ORA and HHT object to the cost and value of the Solar Partners PPAs and recommend in their protests that the Solar Partners AL be rejected. MCE recommends in its protest that future community choice aggregator (CCA) customers should no longer pay for costs associated with the Solar Partners PPAs and customers who depart after the Forbearance Agreement is approved should receive the benefits of any payment received from the Solar Partners.

PG&E replied to the protests on January 22, 2016. In its reply, PG&E recommended denying the protests because they do not provide any substantive reasons for rejecting the Solar Partners AL as they raise issues either already considered by the Commission or outside the scope of the Solar Partners AL.

-

³ Energy Division partially granted ORA's request to extend the protest period for the Solar Partners AL from January 7, 2016 to January 15, 2016.

⁴ NRG is a member of the "Solar Partners" and, consequently, is one of the owners of the Solar Partners projects.

DISCUSSION

PG&E requests approval of a Forbearance Agreement between PG&E and Solar Partners II, LLC and between PG&E and Solar Partners VIII, LLC

In May 2009, PG&E submitted Advice Letter 3458-E requesting that the Commission approve two separate PPAs (Solar Partners PPAs) for Ivanpah Unit #1 and Ivanpah Unit #3 (the Projects). In August 2009, the Commission approved the Solar Partners PPAs in Resolution E-4266, which determined that the terms, conditions, and payments to be made under the Solar Partners PPAs were reasonable and "in the public interest." Each of the Solar Partners PPAs has a twenty-five (25) year term and the Projects utilize a solar tower and tracking technology to heat steam and subsequently produce electricity using solar power.⁴

In July 2010, PG&E submitted Advice Letter 3703-E requesting that the Commission approve of certain amendments to the Solar Partners PPAs. The Commission reviewed the amendments and determined in Resolution E-4369 that the modifications were reasonable and that the total expected costs of the amended Solar Partners PPAs was reasonable.

After the amended Solar Partners PPAs were approved, the Solar Partners proceeded with permitting, financing and constructing the Projects. The Solar Partners applied for and obtained Department of Energy (DOE) loan guarantees for the Projects, as well as for Unit #2 which is under contract to Southern California Edison Company. The total DOE loan guarantee for all three units is approximately \$1.6 billion.

In the Solar Partners AL, PG&E states that the Solar Partners may not meet the performance requirements in the Solar Partners PPAs. Further, PG&E states that if that is the case it may need to take steps, including declaring an event of default, to protect the interests of PG&E ratepayers.

The Forbearance Agreements considered in this resolution are two new agreements between PG&E and the Solar Partners. The Forbearance Agreements do not modify any of the amended Solar Partners PPAs terms or conditions. Pursuant to the Forbearance Agreements, PG&E agrees to withhold from taking any steps towards declaring an event of default through July 31, 2016. In exchange for PG&E not declaring an event of default the Solar Partners will pay for any generation shortfalls.

The Forbearance Agreements will terminate on August 1, 2016, unless the six-month extension provision of the Forbearance Agreements is exercised. The Projects must meet certain production requirements through July 31, 2016, in order for the Forbearance Agreements to be extended. During the time period of the Forbearance Agreement PG&E will retain its rights to declare an event of default. The Solar Partners are also required to pay PG&E for any generation shortfalls during the term of the Forbearance Agreement. Lastly, the proposed Forbearance Agreements are conditioned upon CPUC approval.

Energy Division Evaluated the Forbearance Agreements based on the following criteria:

- Procurement Review Group Requirements
- Cost Reasonableness of the Forbearance Agreements
- Forbearance Agreement and Project Viability

Because the Forbearance Agreements are separate agreements from the amended Solar Partners PPAs, and they do not modify the terms of the amended Solar Partners PPAs, the Commission is not reviewing the reasonableness of those PPAs in this resolution.

Procurement Review Group (PRG) Participation Requirement

The PRG was initially established in D.02-08-071 to review and assess the details of the investor owned utilities' (IOU's) overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

Participants in PG&E's PRG include representatives from the ORA, California Department of Water Resources, The Utility Reform Network, the California Utility Employees, Union of Concerned Scientists, and Jan Reid. In the Solar Partners AL, PG&E asserts that it notified its PRG on December 16, 2015, that it was negotiating the proposed Forbearance Agreements.⁵

Consistent with D.02-08-071, PG&E's Procurement Review Group participated in the review of the Forbearance Agreements.

_

⁵ Solar Partners AL, p. 5.

Cost Reasonableness

Pursuant to the Forbearance Agreements, PG&E will receive payments for guaranteed energy production shortfalls through January 31, 2016. Solar Partners has also agreed to pay for the shortfalls in exchange for PG&E not declaring an event of default through July 31, 2016. Additionally, the Forbearance Agreement requires liquidated damage payments if there are any generation shortfalls during the term of the Forbearance Agreement.

PG&E's CPUC-approved 2014 RPS pro forma PPA6 includes terms that calculate guaranteed energy production damages as the difference between the current market price and the contract price, with a minimum amount of \$20/MWh for GEP damages. The generation shortfall payments to ratepayers in the Forbearance Agreements are consistent with terms recently approved by the Commission. Therefore, the payment amounts for generation shortfalls are reasonable.

Payments received by PG&E under the Forbearance Agreement are reasonable and shall be credited to PG&E ratepayers via PG&E's Energy Resource and Recovery Account (ERRA).

PPA and Settlement Viability

The Projects were developed by the Solar Partners. 7 Solar Partners has received the necessary permits, including a conditional use permit from Clark County and approved habitat control plan. On January 21, 2014 and January 27, 2014, the Projects achieved commercial operation. While production levels have been below the guaranteed energy production requirements of the amended Solar Partners PPAs, PG&E asserts that performance between the second year and first year has substantially increased and that NRG expects that performance of the

⁶ PG&E's 2014 pro forma was included as part of PG&E's 2014 RPS Procurement Plan filing was the most recent pro forma contract that was approved by the Commission. PG&E's 2015 RPS Procurement Plan didn't include a pro forma because PG&E wasn't planning to procure any RPS eligible products in 2015

⁷ Solar Partners is a holding company, consisting of NRG Energy, BrightSource Energy, and Google.

Projects will improve going forward.⁸ See Confidential Appendix A for performance data.

Based on the terms and conditions of the Forbearance Agreements, terms and conditions of the amended Solar Partners PPAs, and generation information provided by PG&E and the Solar Partners, it appears that the Solar Partners will meet the terms and conditions of the Forbearance Agreements and the amended Solar Partners PPAs.

Protests to the Solar Partners AL are denied

As stated above, the Solar Partners AL was protested by ORA, HHT, and MCE and a response was filed by NRG Energy. In addition to the protests and response received, PG&E replied to each of the protests.

The Commission considered factual, legal, and technical issues raised in the protests, responses, and replies that related to the request included in the Solar Partners AL. Any issues relating to the amended Solar Partners PPAs, including price, or recommendations for changes to the findings made in Resolutions E-4266 and E-4369 were not considered, except as described below, because the Forbearance Agreements do not modify the terms of the Solar Partners PPAs.

Office of Ratepayer Advocates Recommend Rejection of the Solar Partners AL

ORA recommends that Energy Division should reject the Solar Partners AL. ORA asserts that continued operation of the Solar Partners facilities is not in ratepayers' economic interests due to the Solar Partners PPAs' high costs. In addition, ORA asserts that the Forbearance Agreement is a short term solution to an issue that PG&E has known about for the past year and provides little incentive to ratepayers. Therefore, ORA argues that declaring an event of default is the best economic decision for ratepayers based on the Commission's principles of contract management and least cost dispatch.

ORA also argues that the Forbearance Agreements do not provide ratepayers with any long-term benefits and questions whether PG&E made a good faith effort to negotiate the best terms for ratepayers. Specifically, ORA argues that it is not clear how PG&E's liquidated damages calculation benefits ratepayers.

⁸ Solar Partners AL, p. 4. See also http://www.energy.ca.gov/sitingcases/ivanpah/index.html for more information on the Projects.

7

Lastly, ORA states that if the Commission does intend to approve the Forbearance Agreements, then the Commission should order PG&E and Solar Partners to modify the payments amounts for generation shortfalls. Specifically, ORA proposed that the Solar Partners pay PG&E based on the amended Solar Partners PPA price or approve the Forbearance Agreements with the condition that the amended Solar Partners PPAs be renegotiated with new PPA terms.

PG&E's reply recommends rejecting ORA's protest. PG&E asserts that the Forbearance Agreements avoid the time, cost, and uncertainty of dispute resolution by providing a limited period during which the Solar Partners could demonstrate that the Projects will be able to meet their production requirements. PG&E also states that ORA's recommendation to terminate the Solar Partners PPAs could potentially lead to a costly and time-consuming dispute resolution process.

Further, PG&E argues that the performance of the Solar Partners projects has been improving, which is evidence that the Forbearance Agreements are not a "short term solution for a longer term problem" as ORA argues. Additionally, PG&E notes that if the Solar Partners are unable to improve the Projects' performance, PG&E still retains their contractual termination rights after the six-month term of the Forbearance Agreements.

Finally, PG&E asserts that the Commission should not require renegotiation of the Forbearance Agreements or amended Solar Partners PPAs. Specifically, PG&E argues that the payments for generation shortfalls are consistent with guaranteed energy production damage provisions that have been approved by the Commission. Further, the Commission has already determined that the amended Solar Partners PPAs are just, reasonable, and beneficial to customers and nothing in the Forbearance Agreements changes the Commission's findings.

The Commission denies ORA's protests. As stated above, the costs of the Forbearance Agreements are reasonable. Further, as asserted in PG&E's reply, the production levels have been increasing; thus, it is reasonable for ratepayers to receive payments for generation shortfalls and PG&E to retain its event of default rights in exchange for providing Solar Partners with additional time to reach guaranteed energy production levels.

HHT Recommends Rejection of the Solar Partners AL

HHT recommends that Energy Division should reject the Solar Partners AL because PG&E fails to demonstrate that the amended Solar Partners PPAs' costs

are just and reasonable given the reduced output allowed at the facility, increased use of natural gas, lower than expected greenhouse gas benefits, increased costs, and environmental hazards. Consequently, HHT recommends that "PG&E should be required to provide a LCBF [least-cost, best-fit] analysis of the proposed PPA amendment" to evaluate the projects' current market value and an Independent Evaluator to support the amendment and comply with D.06-05-039 and D.09-06-050.

PG&E argues in its' reply that the Forbearance Agreements do not amend or modify the Solar Partners PPAs that the Commission found reasonable in Resolutions E-4266 and E-4369. Consequently, PG&E states the value concerns raised by HHT are outside the scope of issues presented in the Solar Partners AL. PG&E also asserts that HHT's environmental concerns are outside of the scope of the Solar Partners AL because those concerns should be directed to the appropriate agencies, such as the California Energy Commission.

The Commission denies HHT's protest. The Commission has already determined that the costs of the amended Solar Partners PPAs are reasonable and that value and environmental issues are outside of the scope of the Solar Partners AL.

Marin Clean Energy Recommends the Solar Partners PPAs' Costs and Any Forbearance Agreement Payments be Appropriately Allocated

MCE protests the Solar Partners AL on two grounds. First, MCE asserts that departing CCA customers should not pay the high rates in the original contract. Specifically, MCE argues that because PG&E is executing the Forbearance Agreements instead of declaring an event of default, PG&E is making a choice to continue to purchasing power from the amended Solar Partners PPAs. MCE further argues that by PG&E making that choice the costs of the Solar Partners PPA cost are avoidable, which pursuant to D.04-12-046 should not be included in the Power Charge Indifference Adjustment (PCIA) and passed on to future CCA (and other direct access customers) customers. Additionally, MCE states that any generation shortfall payments made should be passed through to both PG&E's bundled customers and CCA departing load customers in an equitable manner.

PG&E states in its' reply that MCE's recommendation to terminate the Solar Partners PPAs could potentially lead to a costly and time-consuming dispute resolution process. Further, PG&E argues that the issue of cost responsibility was already decided when the Commission approved the amended Solar

Partners PPAs and that the Forbearance Agreements do not justify any change to that earlier determination. Additionally, PG&E states that current bundled customers will receive the payments through the ERRA. Thus, PG&E asserts that future departing CCA customers will receive the benefit of the Forbearance Agreement payments as MCE recommends.

The Commission denies MCE's protest. The Forbearance Agreements considered in this resolution do not amend the amended Solar Partners PPAs, and therefore do not justify any change to the Commission's earlier determination regarding cost responsibility.

NRG Energy, LLC recommends approval of the Solar Partners AL

NRG Energy Inc. submitted comments supporting the Forbearance Agreements. NRG asserts that the Forbearance Agreements terms and conditions carefully balance the commercial relationship between PG&E and Solar Partners with PG&E's ratepayer interests combined with its need to meet California's RPS requirements. Additionally, NRG notes that the Solar Partners facilities have improved their production and that the Ivanpah units are capable of achieving the performance requirements set forth in the Forbearance Agreements.

Commission Approval of PG&E's Declaration of Default

The Forbearance Agreements will terminate on August 1, 2016, unless the six-month extension provision of the Forbearance Agreements is exercised. The Projects must meet certain production requirements through July 31, 2016, in order for the Forbearance Agreements to be extended.

PG&E's ratepayers have already contributed significantly to the Solar Partners PPAs. A Declaration of Default by PG&E would be a matter of public interest on which the Commission should decide. The Forbearance Agreements allow for up to one year before such a determination needs to be made. Therefore, the Commission requires PG&E to receive Commission approval via a Tier 2 advice letter filing in order to declare an event of default due to GEP shortfall before January 1, 2017.

Safety Considerations

Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution approves two proposed Forbearance Agreements. As the Forbearance Agreements do not require a change in facility operations, there are no incremental safety implications associated with approval of these Forbearance Agreements beyond the status quo.

Based on the information before us, these Forbearance Agreements do not appear to result in any adverse safety impacts on the facilities or operations of PG&E.

Confidential Information

The Commission, in implementing Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, or until one year following contract expiration, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the Solar Partners AL, remain confidential at this time.

COMMENTS

Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on February 16, 2016. On March 7, 2016, the Commission received comments from PG&E, NRG, MCE, HHT, ORA and the Department of Energy.

Office of Ratepayer Advocates Revising the Solar Partners AL to Conform with Minimum Standards of Review

ORA states that Draft Resolution E-4771 commits legal and factual errors in determining that the Forbearance Agreements to the Solar Partners PPAs are reasonable. Specifically, ORA asserts that resolution E-4771 fails to analyze the Forbearance Agreements based on least cost dispatch principles and Standard of Conduct 4;9 that the payments for GEP shortfalls should be higher; and that the Commission should not have considered the PRG's review of the Forbearance Agreements in the Draft Resolution.

Specifically, ORA states that there is no evidence that PG&E complied with Minimum Standard of Conduct 4 (i.e., least cost administration) when determining the reasonableness of the Forbearance Agreements. ORA argues that PG&E has failed to provide an adequate demonstration that the Forbearance Agreements merit Commission approval because PG&E did not present a quantitative assessment of the benefits and/or costs of the Forbearance Agreements. Consequently, ORA recommends that the Commission issue a revised resolution that includes an analysis of the Forbearance Agreements based on least cost dispatch principles.

The Commission rejects ORA's comments regarding the reasonableness of the Forbearance Agreements. The Commission finds that PG&E has provided enough evidence to justify the need and reasonableness of the Forbearance Agreements. Specifically, PG&E ratepayers will benefit by receiving payments for each MWh of GEP shortfall. These payments represent a direct benefit to ratepayers. Secondly, the Forbearance Agreement could potentially reduce litigation risk if PG&E terminates the Solar Partners PPAs due to the facilities not meeting the GEP milestones during the terms of the Forbearance Agreements. Lastly, PG&E retains their contractual termination rights after the six-month term of the Forbearance Agreements.

Regarding the payments for GEP shortfalls, ORA states that the Draft Resolution errs in adopting the GEP payment amount for liquidated damages clause because the amount is too low. ORA declares that PG&E's use of the GEP

-

⁹ Standard of Conduct 4 states that the Commission should review if "The action taken should logically be expected, at the time the decision is made, to accomplish the desired result at the lowest reasonable cost consistent with good utility practices."

shortfall payment methodology that was approved in PG&E's 2014 *pro forma* agreement is inappropriate and unreasonable for use in the Forbearance Agreements.

ORA believes that because the Solar Partners PPAs were executed in 2009, when renewable market prices were much higher, the payments for GEP shortfalls should be reflective of the price of RPS eligible electricity in 2009. Furthermore, ORA states that if the Commission intends to approve the Forbearance Agreements as they stand, the Commission should require PG&E to submit a Tier 1 AL filing to demonstrate how PG&E determined that payments are accurate.

The Commission rejects ORA's comments relating to the GEP shortfall payment amount. PG&E used the GEP shortfall payment calculation from their 2014 pro forma agreement, i.e., the most recent GEP shortfall payment terms approved by the Commission, to determine the GEP shortfall payment amount. The Commission finds GEP shortfall payment amount in the Forbearance Agreements to be reasonable.

Lastly, ORA states that the Commission errs by relying on the Procurement Review Group process to find the Forbearance Agreements reasonable. ORA argues that the PRG itself cannot determine or be the basis of reasonableness for any contract.

As stated above this resolution finds that PG&E brought the Solar Partners Forbearance Agreements to the attention of the PRG consistent with Commission Decision (D.)02-08-071. This resolution does not use the fact that the Solar Partners ALs were discussed at a PRG meeting as a basis for the cost reasonableness of the GEP shortfall payments. Therefore, the Commission rejects ORA's comments regarding the PRG.

HHT Provides Various Comments on the Draft Resolution

HHT argues in its comments on the draft resolution that Energy Division has incorrectly imposed a deadline for submitting comments on Draft Resolution E-4771 of March 7, 2016. Specifically, Section 311(g)(1) states that the resolution should be subject to at least 30 days public review and comment prior to a vote of the Commission.

Section 311(g)(1) applies to Commission Decisions and Commission Hearings, not to draft resolutions. Consequently, the Commission rejects HHT's comments on this matter.

In addition, HHT argues that the Forbearance Agreements allow the Solar Partners to violate the terms of the Solar Partner PPAs by not requiring the Solar Partners to meet their performance requirements. HHT also states that the Forbearance Agreements constitute an amendment to the Solar Partners PPAs, therefore, the Commission must analyze price, safety requirements, and performance guarantees of the Solar Partner projects.

As stated above, the Forbearance Agreements do not modify or amend the Solar Partners PPAs, which the Commission has already determined to be reasonable. The Commission rejects HHT's comments pertaining to the Solar Partners PPAs.

HHT also states that PG&E has not met the Procurement Contract Review Process requirements pursuant to Appendix B of D.02-08-071. As stated above, PG&E did inform the PRG of the Solar Partners AL on December 16, 2015. Consequently, the Commission rejects HHT's comments regarding the PRG.

Lastly, HHT reiterates it concerns relating to the projects' GHG and environmental impact, RPS eligibility, and the impact of the facilities on commercial pilots that it raised in its protest of the AL. The Commission rejects these comments as out of scope for the purpose of this resolution because the CEC responsible for determining the threshold for de minimums gas usage and RPS eligibility. Regarding environmental impact and commercial air safety, these issues are addressed by other agencies.

Marin Clean Energy Recommends the Solar Partners PPAs' Costs and Any Forbearance Agreement Payments be Appropriately Allocated

MCE argues that because PG&E is executing the Forbearance Agreements instead of declaring an event of default, the Solar Partners PPA costs are avoidable. MCE states that pursuant to D.04-12-046, these avoidable costs should not be included in the Power Charge Indifference Adjustment (PCIA) and passed on to future CCA customers.

The Commission rejects MCE's comments. As previously stated, Forbearance Agreements considered in this resolution do not amend the amended Solar Partners PPAs, and therefore do not justify any change to the Commission's

earlier determination regarding cost responsibility. Therefore, the Commission rejects MCE's comments pertaining to this issue.

NRG Energy, LLC, Pacific Gas and Electric Company, and the United States Department of Energy recommend approval of the Solar Partners AL

NRG, PG&E and the United States Department of Energy (DOE) state that they fully support the adoption of the Draft Resolution without modification.

NRG states that the Solar Partners are confident that they will achieve the performance requirements set forth in the Forbearance Agreements. Specifically, NRG asserts that during February 2016, both Units Nos. 1 and 3 substantially exceeded the increased production requirements reflected in the Forbearance Agreements. Solar Partners supports the Draft Resolution without modification.

The DOE notes that it is not uncommon for projects employing new technologies to experience performance shortfalls during their initial periods of operations. The DOE believes that the proposed Forbearance Agreements recognize that the shortfall in GEP at the Solar Partners facilities is a minor setback, and allow for the projects to continue to provide PG&E and its customers with an important source of renewable energy.

FINDINGS

- 1. Consistent with D.02-08-071, PG&E's Procurement Review Group participated in the review of the Forbearance Agreements between PG&E and Solar Partners II, LLC and Solar Partners VIII, LLC.
- 2. The Forbearance Agreements do not amend the existing Solar Partners PPAs, and therefore do not justify any change to the Commission's earlier determination regarding cost responsibility.
- 3. The Forbearance Agreements constitute prudent contract administration of existing PPAs and comply with Minimum Standard of Conduct 4.
- 4. Payments received by PG&E under the Forbearance Agreements are reasonable and shall be credited to PG&E's Energy Resource Recovery Account.
- 5. PG&E shall seek Commission approval via a Tier 2 advice letter filing before declaring an event of default of the Solar Partners Power Purchase Agreements, due to a guaranteed energy production shortfall, before January 1, 2017.

- 6. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the Advice Letter 4761-E, remain confidential at this time.
- 7. Advice Letter 4761-E should be approved and effective today.

THEREFORE IT IS ORDERED THAT:

- 1. The request of the Pacific Gas & Electric Company for review and approval of the proposed Forbearance Agreements with Solar Partners II, LLC and Solar Partners VIII, LLC, as requested in Advice Letter 4761-E, is approved without modification.
- 2. Pacific Gas & Electric Company shall record any payments received pursuant to the Forbearance Agreements approved in this resolution in its Energy Resource Recovery Account.
- 3. PG&E shall seek Commission approval via a Tier 2 advice letter filing before declaring an event of default of the Solar Partners Power Purchase Agreements, due to a guaranteed energy production shortfall, before January 1, 2017.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 17, 2016; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

Confidential Appendix A

Evaluation Summary of the Forbearance Agreements between PG&E and the Solar Partners

[Redacted]